

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 IRENE POLITIS,

4 Plaintiff,

5 v.

18 Civ. 7831 (PAC)

6 THE TRUSTEES OF COLUMBIA
7 UNIVERSITY IN THE CITY OF NEW
8 YORK, et al.,

9 Defendants.

Conference

10 New York, N.Y.
11 January 31, 2019
12 11:50 a.m.

13 Before:

14 HON. PAUL A. CROTTY,

15 District Judge

16 APPEARANCES

17 SANFORD HEISLER SHARP, LLP
18 Attorneys for Plaintiff
19 BY: DAVID W. SANFORD
20 MEREDITH A. FIRETOG

21 KAPLAN HECKLER & FINK LLP
22 Attorneys for Defendants
23 BY: ROBERTA A. KAPLAN

24 PAUL WEISS
25 Attorneys of Defendants
BY: MICHELE S. HIRSHMAN

ORRICK, HERRINGTON & SUTCLIFFE LLP
Attorneys for Defendant Harford
BY: AMY L. WALSH

1 (Case called)

2 MR. SANFORD: Good morning, your Honor. David Sanford
3 for plaintiff Irene Politis.

4 MS. FIRETOG: Your Honor, Meredith Firetog for
5 plaintiff, who is sitting to my left.

6 THE COURT: And who is sitting to your left?

7 MS. FIRETOG: The plaintiff.

8 THE COURT: Ms. Kaplan.

9 MS. KAPLAN: Good morning, your Honor. Roberta Kaplan
10 from Kaplan Hecker & Fink for Columbia University.

11 MS. HIRSHMAN: Michele Hirshman from Paul Weiss for
12 Columbia.

13 MS. WALSH: Good morning, your Honor. Amy Walsh from
14 Orrick, Herrington & Sutcliffe for Tom Harford.

15 THE COURT: Mr. Sanford, do you want to tell me about
16 the case?

17 MR. SANFORD: Yes, your Honor, thank you.

18 Ms. Politis, who is here with us today, was a student
19 at Columbia University in the school of General studies. Last
20 she was raped by an acquaintance. She sought various services
21 at Columbia. She was steered ultimately to Dean Harford, then
22 the dean of the School of General Studies. Shortly thereafter,
23 Dean Harford abused his position and authority and engaged in
24 an intimate sexual relationship with the plaintiff.

25 Ms. Politis ultimately filed her case here before this

1 Court and that's what's pending here. The case is about
2 violations of Title IX, violations of the New York Human Rights
3 Act and various common law causes of action.

4 THE COURT: Ms. Kaplan, you want to make a motion to
5 dismiss?

6 MS. KAPLAN: I do, your Honor.

7 THE COURT: Would you tell me with that, please.

8 MS. KAPLAN: Sure. Your Honor, very briefly from the
9 perspective of the university, let me start with the federal
10 cause of action, Title IX has very strict standards for when a
11 university can be liable in these circumstances. The
12 university has to, one, have known of the conduct and then,
13 according to Justice O'Connor in the *Davis* case, once they
14 know, has to have acted unreasonably under the circumstances.
15 That's the *Davis* standard.

16 We would like to file a motion to dismiss, your Honor,
17 and I discussed with Mr. Stanford beforehand and we agreed on
18 the date of February 12 arguing that based on the pleadings,
19 plaintiff cannot meet that standard in the federal claims have
20 to be dismissed. We have similar arguments for the city law,
21 which I'm happy to go into, but that's essentially the gist of
22 the motion.

23 THE COURT: Is there any possibility that a claim
24 could be stated under Title IX?

25 Is there any possibility that the plaintiff can state

1 a claim under Title IX, because there's a motion to dismiss,
2 there's probably leave to replead.

3 MS. KAPLAN: I don't think so, your Honor. There's
4 two points, one, Columbia didn't know the nature of the
5 relationship here, and I'm a bit of a prude myself, but it was
6 a very fetishistic sexualized relationship, and let me just
7 leave it at that. There's really the kind of extreme nature of
8 it, probative of the fact Columbia didn't know about this, they
9 wouldn't have tolerated someone at Columbia having
10 relationships with like this for one day, much less three
11 months.

12 Two, it's undisputed that as soon as they knew about,
13 they immediately removed Harford from campus and then within a
14 week fired him. The university can't be expected to do
15 anything more than that, your Honor. It's not a strict
16 liability statute. So while I understand that the Court may
17 want to grant me to replead, I don't think there are any facts
18 they could plead here that would justify the Title IX
19 standards.

20 THE COURT: The way I'm reading the Second Circuit, I
21 think there is a need to replead. I don't think it's the right
22 position. That is the position.

23 MS. KAPLAN: I heard that from other district judges
24 as well. I'm aware of that.

25 THE COURT: Mr. Sanford.

1 MR. SANFORD: Thank you, your Honor. Under Title IX,
2 the standard is clear, a recipient of federal education funds
3 is liable under Title IX where it is, "deliberately indifferent
4 to known acts of sexual harassment by," in this case a
5 university employee.

6 THE COURT: How could they be deliberately indifferent
7 if they didn't know?

8 MR. SANFORD: Well, they did know and we pled very
9 clearly in our complaint, paragraphs 56 through 67 ways in
10 which Columbia had actual knowledge. They knew about
11 misbehavior of this dean dating back to at least 2012 when
12 there was a complaint lodged against him for harassment.

13 THE COURT: By the plaintiff or by someone else?

14 MR. SANFORD: Well, I'm going to get to that, your
15 Honor.

16 But before that, they actually knew of his misbehavior
17 by other complainants dating back to 2012 and 2013. And we
18 allege that they actually knew about issues concerning
19 Ms. Politis, given what other university officials knew about
20 based on text messages and other matters. This is essentially
21 a fact-intensive inquiry. We request leave of Court to have
22 that fact discovery take place immediately. I know that
23 Columbia's position is they want to have a stay. It's partly
24 what we're here today to talk about, but it's very important
25 for the plaintiff to be able to establish her facts, the facts

1 as alleged already survive a motion to dismiss. We understand
2 based on other things we already have access to through
3 Columbia employees that there are other facts that will emerge
4 to support our claims. There's no way I can imagine that
5 Columbia could win on a motion to dismiss. They're perfectly
6 free to file it, but we should be free to establish our case on
7 discovery

8 THE COURT: Have you agreed with Ms. Kaplan on a
9 motion schedule?

10 MR. SANFORD: Yes.

11 THE COURT: What is the motion schedule?

12 MR. SANFORD: Ms. Kaplan approached me ten minutes
13 before we entered the court and suggested she would file the
14 motion on the 12th of February. And that's fine for plaintiff,
15 your Honor.

16 THE COURT: How much time do you want respond?

17 MR. SANFORD: One month, your Honor, please.

18 THE COURT: One month fine, Ms. Kaplan?

19 MS. KAPLAN: That's totally fine.

20 THE COURT: How much time for reply?

21 MS. KAPLAN: Two weeks, your Honor.

22 One other issue with respect to that.

23 THE COURT: Just a minute.

24 David, Can you read back the schedule.

25 THE DEPUTY CLERK: Motion due by February 12.

1 Response, March 12.

2 THE COURT: And reply?

3 THE DEPUTY CLERK: March 26.

4 MS. KAPLAN: One more issue on the motion to dismiss,
5 your Honor. I asked if Mr. Sanford would agree given the new
6 claims. There are 11 claims pled in the complaint, nine of
7 them against Columbia. Two have been added in the amended
8 complaint, so I asked for another five pages. So 30 pages,
9 assuming your Honor is OK with that, Mr. Sanford said it was
10 OK.

11 THE COURT: 25 pages I think is probably enough. If
12 you want 30, I'll give more pages.

13 Do you want more pages, Mr. Sanford?

14 MR. SANFORD: Five more pages, your Honor.

15 THE COURT: You get the same treatment.

16 MR. SANFORD: Thank you.

17 THE COURT: 30 pages each.

18 What about the stay of discovery during the pendency
19 of the motion?

20 MR. SANFORD: We oppose that motion for a stay, your
21 Honor. It's imperative that we move quickly. There's
22 third-party discovery that will be at issue in this case, which
23 will include phone logs. As the Court undoubtedly knows, phone
24 providers only keep those logs for a certain period of time.
25 We think it's imperative we got started with that discovery.

1 There's other discovery that would be important to do timely as
2 well. There are students who are here who may not be here in a
3 year from now who had interactions with the dean. All of that
4 could become relative in this case. So it's imperative from
5 our perspective that we get started right away. It's hard to
6 imagine Columbia prevailing on all of its motions it's going to
7 file regarding dismissal.

8 THE COURT: It only has to prevail on its Title IX
9 claim to defeat federal jurisdiction.

10 MR. SANFORD: This Court could retain pending
11 jurisdiction in its discretion.

12 THE COURT: Again, the trend seems to be if there's no
13 federal claim, it gets remitted to state court, especially for
14 the city and the state human rights law.

15 MR. SANFORD: Again, as I mentioned before, your
16 Honor --

17 THE COURT: We're getting way ahead of ourselves.

18 MR. SANFORD: Yes. I just wanted to reiterate the
19 idea that we have evidence already that shows that Columbia
20 actually knew of misbehavior in the past and of misbehavior
21 this past summer with respect to Ms. Politis. So, again, it's
22 very unlikely and part of the standard is the likelihood of
23 prevailing here. It's very unlikely that Columbia is going to
24 prevail on its motion to dismiss.

25 THE COURT: Ms. Kaplan.

1 MS. KAPLAN: Your Honor, we just agreed to a pretty
2 expedited schedule on the motion to dismiss. I obviously
3 disagree with Mr. Sanford. We believe that for sure the Title
4 IX claim will be dismissed. We believe if your Court went on
5 to decide the state claims, you would dismiss those as well.
6 As your Honor noted, you certainly have the discretion, if not
7 more than that, to send it back to state court.

8 There's another issue we talk about in our letter that
9 presents a real practical problem for us, which is there's a
10 very strict, as your Honor probably knows, privacy statute that
11 applies to all standard records at Columbia called FERPA. And
12 to the extent any e-mail or any document has any discussion
13 about any student, which presumably that's what they would ask
14 for, other than Ms. Politis, we have a real burden on our hands
15 about how to deal with those requests and how to produce
16 things, and we'd rather not deal with that obviously that
17 burden until the motion to dismiss is decided.

18 THE COURT: Ms. Walsh, you've been quiet. Do you have
19 anything to say?

20 MS. WALSH: Your Honor, I would only add that even
21 though we're not moving to dismiss all the counts in the
22 amended complaint, we join the motion to stay discovery because
23 we wouldn't want the discovery to go forward in a piecemeal
24 way, and for the reasons Ms. Kaplan stated, we join her motion.

25 THE COURT: Anything else before I rule?

1 MR. SANFORD: Your Honor, I would simply add, if I
2 may, that the burden that Ms. Kaplan talks about argues in
3 favor of us doing discovery now. There are going to be a lot
4 of issues we're going to have to work through regarding a
5 protective order that will undoubtedly be in place for
6 Columbia. We're going to have to negotiate that. There may be
7 motions to compel. There's third party discovery, as I
8 mentioned earlier. For all those reasons, that tells in favor
9 of doing discovery now.

10 MS. KAPLAN: Your Honor, briefly. Of course we're
11 retaining all documents. There's absolutely zero issue there.
12 What Mr. Sanford just pointed out is exactly why we shouldn't
13 have to go through that extensive burden until we know whether
14 this is claim is surviving in this court.

15 MR. SANFORD: Your Honor, if may, one other thing.

16 THE COURT: Yes.

17 MR. SANFORD: We had not been given the advantage of
18 being able to put paper before the Court. We had three days to
19 do that. We're prepared to respond in detail within three
20 pages to Ms. Kaplan's submission, and we can do that tomorrow
21 if the Court would allow.

22 THE COURT: I'll certainly allow it, but I don't think
23 it's necessary. We've agreed on a motion schedule. The issue
24 is whether or not we should stay discovery during the pendency
25 of the motion.

1 And on that, I believe that just from reading the
2 complaint and reading Ms. Kaplan's letter, a claim can't be
3 stated under Title IX. Whether it has been stated or is not is
4 a separate question, but there certainly will be leave to
5 replead if the pleadings are found inadequate for any reason.
6 Under these circumstances, I'm going to not allow for a stay of
7 discovery during the pendency of the motions. I will promise
8 you that I'll make the decision on the motions very promptly.
9 Even if the matter is dismissed for failure to state a claim
10 under Title IX grounds, there will be remanded to state court
11 for further action and further consideration and there will be
12 discovery in any event. So since there's going to be discovery
13 in any event, I won't stay discovery during the pendency of the
14 motion. I will decide the motion promptly on its submission to
15 the Court.

16 We didn't talk about the \$50 million claim. Is there
17 any case law support for saying you can't claim \$50 million for
18 violation of the law?

19 MS. KAPLAN: We believe so, your Honor. It actually
20 for \$60 million.

21 THE COURT: \$60 million.

22 MS. KAPLAN: The entire relationship between plaintiff
23 and Dean Harford lasted a grand total of three months. There's
24 no way on compensatory damages they're going to get into any
25 range that even a punitive damages award can even approach

1 \$60 million under the due process limitations that have been
2 very clearly set out by the Supreme Court.

3 THE COURT: That's my ruling. I'll get right after
4 the submission date, I promise you that I will attend to this
5 very promptly. In the meantime, discovery can commence.

6 Do we have a civil case management plan? Has that
7 been submitted?

8 MR. SANFORD: Plaintiff has submitted its proposal,
9 your Honor.

10 THE COURT: Pardon me?

11 MR. SANFORD: Plaintiff has submitted to the Court its
12 proposal.

13 MS. KAPLAN: Your Honor, given your Honor's ruling by
14 the state, we have no objection to that proposal.

15 THE COURT: Is that Exhibit 8, Mr. Sanford, of your
16 letter of January 29?

17 MR. SANFORD: Yes.

18 THE COURT: I'm going to sign the civil case
19 management plan submitted by Mr. Sanford with his letter of
20 January 29. Date that today, January 31, 2019.

21 What's the date of your reply, Ms. Kaplan?

22 THE DEPUTY CLERK: The 26th.

23 MS. KAPLAN: 26th.

24 THE COURT: March 26?

25 MS. KAPLAN: Yes, your Honor.

1 THE COURT: Why don't we schedule a conference for
2 April 9, Tuesday April 9. What time, David?

3 THE DEPUTY CLERK: At 4:30 p.m.?

4 THE COURT: 4:30 p.m. on Tuesday the 9th of April.
5 We'll have another conference.

6 MR. SANFORD: Thank you, your Honor.

7 THE COURT: Anything further, Mr. Sanford?

8 MR. SANFORD: No. Thank you, your Honor.

9 THE COURT: Ms. Kaplan.

10 MS. KAPLAN: Your Honor, we had two other motions
11 we'll talk about on the motion. I presume we'll talk about
12 them on February 12 as well. You raised the motion to strike.
13 There's a Rule 11 issue. We're not seeking fees on Rule 11
14 penalties, we're not seeking a penalty. We just don't think
15 there is any credible basis for them to allege that we forcibly
16 evicted plaintiff from her apartment. It is an issue of some
17 import to because Columbia doesn't evict, much less forcibly
18 evict its own students. We'd like to file a Rule 11 motion on
19 that.

20 THE COURT: I assume you're going to make all the
21 grounds you listed in your letter.

22 MS. KAPLAN: Yes, your Honor.

23 THE COURT: Fine.

24 MS. KAPLAN: Thank you.

25 THE COURT: Anything else?

1 MR. SANFORD: Not for plaintiff, your Honor.

2 THE COURT: Ms. Kaplan. Ms. Walsh.

3 MS. KAPLAN: Nothing, your Honor.

4 MS. WALSH: No, your Honor.

5 (Adjourned)

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